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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44929
)	
v.)	MINIDOKA COUNTY NO. CR 2016-154
)	
BRADLEY ARMSTRONG,)	APPELLANT'S REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Mr. Armstrong contends the district court abused its discretion when it sentenced him to a unified term of ten years, with six years fixed, for felony driving under the influence (DUI). Mr. Armstrong submits this Reply Brief to respond to the State's argument that he is precluded from challenging the length of his sentence under the doctrine of invited error. There was no invited error in this case, and this Court must review whether the sentence imposed was excessive. Because the sentence was excessive, it represents an abuse of discretion, and Mr. Armstrong is entitled to relief from this Court.

Statement of Facts and Course of Proceedings

Mr. Armstrong included a statement of facts and course of proceedings in his Appellant's Brief, which he relies on and incorporates herein. (*See* Appellant's Br., pp.1-2.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Armstrong to a unified term of ten years, with six years fixed, for felony DUI?

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Armstrong To A Unified Term Of Ten Years, With Six Years Fixed, For Felony DUI

Mr. Armstrong argued in his Appellant's Brief that, given any view of the facts, his unified sentence of ten years, with six years fixed, was excessive. (Appellant's Br., pp.3-4.) In its Respondent's Brief, the State argues Mr. Armstrong's argument "fails" because first, he "acquiesced to the sentence he received and is therefore precluded by the invited error doctrine from challenging the sentence on appeal," and second, his sentence was not excessive. (Respondent's Br., p.2.) Mr. Armstrong did not "acquiesce" in the sentence he received, and he can challenge his sentence as excessive, which it was.

Mr. Armstrong entered into a plea agreement with the State, pursuant to which he agreed to plead guilty to felony DUI, and the State agreed to recommend a unified sentence of six years, with three years fixed, and with a period of retained jurisdiction. (R., pp.45-47.) At sentencing, the district court stated the terms of the plea agreement on the record, and asked the prosecutor if that would be the State's recommendation. (Tr., p.4, Ls.10-17.) The prosecutor stated, "It will be, Your Honor." (Tr., p.4, L.18.) The prosecutor later reiterated that the State "would ask the court to follow [the] agreement: The unified sentence of six years, with three years fixed, and a

period of retained jurisdiction.” (Tr., p.5, Ls.19-21.) The district court asked Mr. Armstrong’s counsel for his recommendation, and he said:

Your Honor, Mr. Armstrong has always been willing to take responsibility for this since this case started. He’s indicated a desire to get this resolved and taken care of. He was willing to accept—start with the retained jurisdiction offer. He’s somewhat familiar with it and we have discussed it, especially with the new program that has gone into effect with that. He’s willing to participate and do that program and basically see how he does. If he’s successful at this he will be able to get back and do probation. If he’s unsuccessful, finishing out the time on the case. He’s aware of kind of what the consequences are and what’s going forward.

(Tr., p.7, Ls.1-12.) The district court asked Mr. Armstrong if he wanted to say anything, and he answered, “No thanks, Your Honor.” (Tr., p.7, Ls.21-23.) The district court then discussed Mr. Armstrong’s case, and said, “I’ll do this, Mr. Armstrong. If I were just going to sentence you today to prison I’d give you the three plus three for six. I’ll retain jurisdiction here, but I’m going to tell you a couple of things” (Tr., p.15, L.24 – p.16, L.5.) The district court continued:

So I’m going to go with a longer sentence and a retained jurisdiction so that if you’re out on probation in the future and there are problems, you’re going to do a longer sentence. If you want to go to prison, tell me, and we’ll do three to six. But in the exercise of discretion I will sentence you to a unified sentence of ten years, comprising six years fixed, four years indeterminate, and I’ll retain jurisdiction for a one-year period.

(Tr., p.17, Ls.15-23.)

The district court was not “invited” by Mr. Armstrong to “go with a longer sentence and a retained jurisdiction.” (Tr., p.17, Ls.15-16.) The district court “offered” to impose the sentence recommended by the State (six years, with three years fixed), but this “offer” would not have included a period of retained jurisdiction, and, with it, an opportunity for Mr. Armstrong to earn probation. (Tr., p.17, Ls.18-19.) The fact that Mr. Armstrong did not accept the district court’s “offer” to be sent straight to prison does not mean he is precluded from challenging his

sentence as excessive in this appeal. This Court must consider whether the district court abused its discretion by ignoring the State's recommendation and imposing an excessive sentence. On this issue, Mr. Armstrong relies on the argument contained in his Appellants' Brief. (*See* Appellant's Br., pp.3-4.)

CONCLUSION

For the reasons stated above, as well as those set forth in his Appellant's Brief, Mr. Armstrong respectfully requests that the Court reduce his underlying sentence as it deems appropriate. Alternatively, he requests that the Court vacate his underlying sentence and remand this case to the district court for a new sentencing hearing.

DATED this 14th day of September, 2017.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of September, 2017, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

BRADLEY ARMSTRONG
86 PELICAN DRIVE
RUPERT ID 83350

JONATHAN BRODY
DISTRICT COURT JUDGE
E-MAILED BRIEF

JACOB D TWIGGS
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CRIMINAL DIVISION
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_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas